

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NO. 4-10-0757

Order Filed 5/20/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: R.H.-O., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 09JA55
CARENA HAMBRICK,	)	
Respondent-Appellant.	)	Honorable
	)	Richard P. Klaus,
	)	Judge Presiding.

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JUSTICE TURNER delivered the judgment of the court.  
Presiding Justice Knecht and Justice Appleton concurred  
in the judgment.

**ORDER**

*Held:* Where the minor's temporary guardian was a necessary party to the proceedings but was not provided notice or served with summons, respondent's rights were violated.

In August 2009, the State filed a petition for adjudication of wardship with respect to R.H.-O., the minor child of respondent, Carena Hambrick. In December 2009, the trial court adjudicated the minor a ward of the court and placed custody and guardianship with the Illinois Department of Children and Family Services (DCFS). In October 2010, respondent filed a late notice of appeal, which this court allowed. In March 2011, this court dismissed the appeal for lack of jurisdiction. In April 2011, the supreme court vacated that decision and directed this court to consider the merits of the appeal.

On appeal, respondent argues (1) the temporary guardian was a necessary party and should have been named and appointed

counsel and (2) the steps taken to place R.H.-O. in a temporary guardianship negated any neglect on her part. We vacate and remand with directions.

#### I. BACKGROUND

In August 2009, the State filed a petition for adjudication of neglect and shelter care, alleging respondent's son, R.H.-O., born in July 1997, was a neglected minor pursuant to sections 2-3(1)(a) and (1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(a), (1)(b) (West 2008)). The petition alleged R.H.-O. was neglected, in part, because his environment was injurious to his welfare when he resided with his mother because of her history of mental illness.

The shelter-care report indicated respondent came to DCFS in June 2009 and presented a caseworker "with temporary guardianship papers (not court approved) for Ms. Muhammad to be the guardian" of R.H.-O. The expiration date was December 16, 2009, and the paperwork indicated Ms. Muhammad had permission to make all necessary decisions for R.H.-O. and obtain any necessary treatment. The notarized authorization and consent of parent or legal guardian, signed by respondent and Muhammad, was attached to the shelter-care report.

The trial court found probable cause to believe the minor was neglected and an immediate and urgent necessity existed to place him in shelter care. The court granted temporary custody to DCFS.

In October 2009, the trial court conducted the adjudi-

catory hearing. Respondent did not appear. Her attorney stipulated the State's witnesses would testify consistently with the shelter-care report, respondent's mental-health records, and DCFS case notes. The court found the minor neglected, noting respondent has "profound psychiatric issues" that have affected her ability to act as a custodial parent.

In November 2009, the trial court conducted the dispositional hearing. Respondent did not appear. The dispositional report indicated R.H.-O. had been placed with Kimberly Muhammad, his maternal aunt. In its December 2009 dispositional order, the court found it in the minor's best interest that he be made a ward of the court and placed custody and guardianship with DCFS.

In March, April, and September 2010, the trial court entered permanency orders. On September 15, 2010, respondent's counsel filed a motion to file a notice of appeal *nunc pro tunc*. On October 12, 2010, counsel filed a motion for leave to file a late notice of appeal, which this court allowed. In March 2011, this court dismissed the appeal for lack of jurisdiction. *In re: R.H.-O.*, No. 4-10-0757 (March 27, 2011) (unpublished order under Supreme Court Rule 23). On April 13, 2011, the supreme court ordered this court to vacate that decision, allow the October 12, 2010, notice of appeal to stand, and consider the merits of the appeal.

## II. ANALYSIS

Respondent argues R.H.-O.'s temporary guardian was a necessary party. We agree.

"Our supreme court has held that the failure to give proper notice of juvenile proceedings to parents of a minor and to any necessary parties is a due[-]process violation of the parents' constitutional rights." *In re M.P.*, 401 Ill. App. 3d 742, 746, 928 N.E.2d 1287, 1291 (2010) (citing *In re A.H.*, 195 Ill. 2d 408, 424, 748 N.E.2d 183, 193 (2001)). A guardian is a necessary party to the proceeding. *In re Marcus W.*, 389 Ill. App. 3d 1113, 1120-21, 907 N.E.2d 949, 954 (2009) (quoting *In re R.D.S.*, 94 Ill. 2d 77, 82-83, 445 N.E.2d 293, 295-96 (1983), *overruled on other grounds in In re M.W.*, 232 Ill. 2d 408, 905 N.E.2d 757 (2009)).

Section 2-15(1) of the Act (705 ILCS 405/2-15(1) (West 2008)) provides, in part, as follows:

"When a petition is filed, the clerk of the court shall issue a summons with a copy of the petition attached. The summons shall be directed to the minor's legal guardian or custodian and to each person named as a respondent in the petition[.]"

In the case *sub judice*, respondent had granted temporary guardianship of R.H.-O. to his maternal aunt, Kimberly Muhammad. As Muhammad was R.H.-O.'s temporary guardian and custodian at the time the State filed its petition in this case, Muhammad was a necessary party and had a right to adequate notice at all stages of the proceedings. As she was not given proper notice of the proceedings, respondent's due-process rights were

violated. Accordingly, this cause must be remanded for the addition of Muhammad as a necessary party and new adjudicatory and dispositional hearings.

### III. CONCLUSION

For the reasons stated, we vacate the trial court's adjudicatory and dispositional orders and remand for further proceedings not inconsistent with this opinion.

Vacated; cause remanded with directions.